

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation Provisions	)	
Of the Telecommunications Act of 1996	)	
The Illinois Public Telecommunications Association's,	)	
Petition for A Declaratory Ruling Regarding the Remedies	)	
Available for Violations of the Commission's Payphone	)	
Orders	)	

**COMMENTS OF THE FLORIDA PUBLIC TELECOMMUNICATIONS  
ASSOCIATION, INC.**

The Florida Public Telecommunications Association, Inc. ("FPTA"), on behalf of its members, hereby files Comments in the above captioned proceeding, in accordance with sections 1.415 and 1.419 of Federal Communications Commission ("FCC" or "Commission") rules and the Public Notice released by the Commission on August 6, 2004.

FPTA supports the Declaratory Ruling sought by the Illinois Public Telecommunications Association ("IPTA") in general and with specific reference to IPTA's requests (1) "for a declaratory ruling as to the consequences and remedies available for an ILECs violation of the Commission's Payphone Orders requiring the provision by April 15, 1997 of network services to PSPs at cost-based rates that satisfy the new services test" and (2) whether ILECs whose payphone interconnection rates were not in compliance with the cost-based rate and new services test requirements established by the Commission should now be required to disgorge dial around compensation amounts that they have improperly collected.

By these Comments, FPTA hereby adopts and reiterates the very same legal, equitable and administrative precedents and arguments set forth by IPTA in its Petition. Moreover, FPTA advises the Commission that the need for this guidance is a matter of broad national concern and is not limited solely to the State of Illinois. Proper resolution of IPTA's Declaratory Ruling request is critical to the proper enforcement and implementation of the Commission's prior orders on this subject. It is also vital to the public interest in promoting the continued widespread deployment of pay telephones across the nation, as mandated by Section 276 of the Telecommunications Act of 1996<sup>1</sup> (the "Act") and recognized in numerous FCC payphone orders, including the most recent Commission order adjusting the dial around compensation rate in Docket 03-225.

This need is especially acute in Florida and the other BellSouth states, wherein BellSouth exited the payphone business earlier this year. Depriving independent payphone providers of significant refunds of amounts paid in excess of compliant rates, while allowing the RBOCs to retain (i) amounts collected for rates not in compliance with Section 276 of the Act and (ii) vast sums of dial around compensation collected during periods of such non-compliance, is grossly inequitable and should not be countenanced by this Commission. Such inequities are exacerbated in this matter because the RBOCs' collection of dial around compensation was conditioned on providing payphone access rates compliant with Section 276 of the Act and the New Services Test. Instead, the Commission should act swiftly and decisively to prevent further unjust enrichment of the RBOCs and promote the widespread deployment of payphones consistent with Section 276 of the Act. Granting IPTA's petition on an

---

<sup>1</sup> 47 U.S.C. § 276.

expedited basis will accomplish both of these goals and put an end to the controversy being experienced in many jurisdictions across the country.

In Florida, FPTA has a pending petition before the Florida Public Service Commission, (“FPSC”) seeking refunds from BellSouth for past overcharges of its payphone access rates. Notably in the proceeding, BellSouth is making the very same types of arguments presented by the ILECs in the Illinois case, seeking to avoid its refund obligations based upon the “filed rate” doctrine, claims of “retroactive ratemaking” and the like. Also similar to Illinois, BellSouth’s payphone interconnection rates in Florida were never the subject of a hearing. More uniquely, but nonetheless of great relevance and import to the instant FCC proceeding, in the Florida circumstance BellSouth “chose” to reduce its payphone interconnection rates that had been in effect since April 15, 1997 by the exact amount of the federal EUCL immediately prior to filing its testimony in the Florida docket. Notwithstanding this transparent admission by BellSouth that its prior rates were non-compliant and at direct odds with this Commission’s clarification and guidance as provided in its Payphone Orders<sup>2</sup> and, most recently, in the Wisconsin Orders,<sup>3</sup> BellSouth has fervently maintained that no refunds of the prior EUCL “double recovery” amounts can legally be ordered. Yet, BellSouth sees no problem at all in

---

<sup>2</sup> *In the matter of the Implementation of the Pay Telephone Reclassification And Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd. 20541, ¶¶ 146-147 (1996) (“*First Payphone Order*”), and Order on Reconsideration, 11 FCC Rcd. 21233 (1996), ¶¶ 131, 163 (“*Payphone Reconsideration Order*”) *aff’d in part and remanded in part sub nom. Illinois Public Telecommunications Assn. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) *clarified on rehearing* 123 F.3d 693 (D.C. Cir. 1997) *cert. den. Sub nom. Virginia State Corp. Com’n v. FCC*, 523 U.S. 1046 (1998); Order, DA 97-678, 12 FCC Rcd. 20997, ¶¶ 2, 30-33, 35 (Com. Car. Bur. released April 4, 1997) (“*Bureau Waiver Order*”), Order, DA 97-805, 12 FCC Rcd. 21370, ¶ 10 (Com. Car. Bur. released April 15, 1997) (“*Bureau Clarification Order*”) (collectively “*Payphone Orders*”)

<sup>3</sup> *In the Matter of Wisconsin Public Service Commission: Order Directing Filings*, Bureau/CPD No. 00-01, Memorandum Opinion and Order, FCC 02-25, 17 FCC Rcd. 2051, ¶ 31 (Jan. 31, 2002) (“*Wisconsin Order*”) *aff’d sub nom. New England Public Communications Council, Inc. v. FCC*, 334 F.3d 69 rehearing and rehearing en banc denied (Sep. 22, 2003).

retaining the tens of millions of dollars in dial around compensation that it collected prior to exiting the payphone business and during this extended period of non-compliance.

The pending FPSC proceeding is scheduled for a decision on September 7, 2004, and while FPTA is hopeful that the Florida Commission will order an award of the refunds due, FPTA fully expects a legal challenge of such an FPSC ruling by BellSouth to ensue if any such refunds are ordered. Moreover, proper guidance will help to ensure that the FPSC proceedings properly implement this Commission's intentions with respect to refunds of overcharges by BellSouth. As such, clear guidance by the FCC will be most helpful and necessary here in Florida.

Wherefore, the FPTA respectfully requests that the Commission grant the IPTA Petition for Declaratory Ruling and provide the clarification and guidance that is so vital to public interest in this circumstance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David S. Tobin', written over a horizontal line.

David S. Tobin, attorney for the  
Florida Public Telecommunications Association, Inc.

David S. Tobin, Esq.  
Tobin & Reyes, P.A.  
7251 West Palmetto Park Road  
Suite 205  
Boca Raton, Florida 33433